

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO. 08-CV-1743-JM-NLS	DATE FILED 09/23/2008	U.S. DISTRICT COURT Southern District of California
PLAINTIFF Fractional Villas, Inc.		DEFENDANT Walker et al
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 See complaint	6 6,613,055	11
2 6,613,055	7	12 SOLICITOR
3 6,856,810	8	13 OCT 19 2009
4 6,613,055	9	14
5 6,856,810	10	15 U.S. PATENT & TRADEMARK OFFICE

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1	6	11	
2	7	12	
3	8	13	
4	9	14	
5	10	15	

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT <i>attached</i>		
CLERK W. Samuel Hamrick, Jr.	(BY) DEPUTY CLERK <i>H. J. J. J.</i>	DATE 10/2/09

1 services are Plaintiffs' services or that Defendants and their services are authorized, endorsed, or
 2 sponsored by Plaintiff;

3 4. That a permanent injunction be granted perpetually enjoining Defendants and all those
 4 in privity with Defendants from advertising, displaying, or broadcasting over the Internet a web site
 5 which infringes on the Copyrights, or any derivation thereof, or which by imitation or other similarity
 6 to that of Plaintiff is likely to cause confusion, mistake, dilution, or persons to be deceived into the belief
 7 that Defendants' services are Plaintiff's services or that Defendants and their services are authorized,
 8 endorsed, or sponsored by Plaintiff;

9 5. That a judgment be entered that Defendants have infringed, actively induced others to
 10 infringe, and/or contributorily infringed U.S. Copyright Registration Nos. TX-6-613-055 and TX-6-856-
 11 810;

12 6. That a judgment be entered that Defendants be required to pay over to Plaintiff all
 13 damages sustained by Plaintiff due to Defendants intentional, willful, and malicious infringement of U.S.
 14 Copyright Registration Nos. TX-6-613-055 and TX-6-856-810, such damages as this court shall deem
 15 just and proper within the provisions of the Copyright Act, but not less than \$150,000 for each separate
 16 infringement of Plaintiff's copyrights;

17 7. That all gains, profits, and advantages derived by Defendants from their acts of
 18 infringement and other violations of law be deemed held in constructive trust for the benefits of Plaintiff;

19 8. That Defendants, and each of them, account to Plaintiff for their profits and any damages
 20 sustained by Plaintiff arising from the foregoing acts of infringement;

21 9. That punitive damages be awarded;

22 10. That costs and prejudgment interest be awarded on all damages;

23 11. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17
 24 U.S.C. §§ 101 et seq. and California Business & Professions Code §§ 17200 et seq.

25 12. That an order be entered requiring Defendants to deliver up to be impounded during the
 26 pendency of this action all copies of copyrighted material in Defendants' possession and infringing U.S.
 27 Copyright Registration Nos. TX-6-613-055 and TX-6-856-810;

28 ///

LAW OFFICES OF HENRY HARMELING IV, APC
 402 W. Broadway, Suite 1760
 San Diego, California 92101
 Telephone: (619) 814-3505
 Facsimile: (858) 408-2405

13. That Defendants be required to file with the court within 30 days after entry of final judgment of this cause a written statement under oath setting forth the manner in which Defendants have complied with final judgment;

14. That Plaintiff be awarded such other and further relief as the court deems appropriate.

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Dated: September 15, 2008

Law Offices of Henry Harmeling IV, APC



Henry Harmeling IV
Attorneys for Plaintiff FRACTIONAL VILLAS, INC.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury of all issues so triable.

Dated: September 15, 2008

Law Offices of Henry Harmeling IV, APC



Henry Harmeling IV
Attorneys for Plaintiff FRACTIONAL VILLAS, INC.

LAW OFFICES OF HENRY HARMELING IV, APC
402 W. Broadway, Suite 1760
San Diego, California 92101
Telephone: (619) 814-3505
Facsimile: (619) 408-2405

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRACTIONAL VILLAS, INC., a California
corporation,

Plaintiff,

v.

TIA WALKER, an individual; LUXURY
FRACTIONAL GETAWAYS, an unknown entity;
and DOES 1-25,

Defendants.

Case Number: 08 CV 1743 JM (NLS)

Courtroom: 16

Judge: Hon. Jeffrey T. Miller


**ORDER ON JOINT MOTION FOR
DISMISSAL WITHOUT PREJUDICE AS
TO DEFENDANTS TIA WALKER AND
LUXURY FRACTIONAL GETAWAYS**

Doc. No. 25

Having considered the Joint Motion for Dismissal Without Prejudice As To Defendants TIA WALKER and LUXURY FRACTIONAL GETAWAYS, and good cause appearing, the motion is granted and the action against TIA WALKER and LUXURY FRACTIONAL GETAWAYS is dismissed without prejudice.

IT IS SO ORDERED.

DATED: September 24, 2009


Hon. Jeffrey T. Miller
United States District Judge

FILED

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U.S. DISTRICT COURT

BY: *ec* **DEPUTY**

Henry Harmeling IV, State Bar No. 207673
LAW OFFICES OF HENRY HARMELING IV, APC
402 W. Broadway, Suite 1760
San Diego, California 92101
EMAIL: hh@hh4law.com
TEL: (619) 814-3505
FAX: (858) 408-2405

Attorneys for Plaintiff FRACTIONAL VILLAS, INC.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA

FRACTIONAL VILLAS, INC., a California corporation,

Plaintiff,

v.

TIA WALKER, an individual; LUXURY FRACTIONAL GETAWAYS, an unknown entity; and DOES 1-25,

Defendants.

Case Number:

Dept. **08 CV 1743** **JM** LSP
Judge:

COMPLAINT FOR MONETARY DAMAGES AND INJUNCTIVE RELIEF FOR:

1. **INFRINGEMENT OF UNITED STATES COPYRIGHT REGISTRATION NOS. TX-6-613-055 AND TX 6-856-810;**
2. **FEDERAL UNFAIR COMPETITION VIOLATIONS;**
3. **CALIFORNIA STATE UNFAIR COMPETITION VIOLATIONS**

DEMAND FOR TRIAL BY JURY

Plaintiff FRACTIONAL VILLAS, INC. alleges as follows:

PARTIES

1. Plaintiff FRACTIONAL VILLAS, INC. ("FVI" or "Plaintiff") is, and at all relevant times was, a corporation organized and existing under the laws of California and has its principal place of business in Del Mar, California.

2. ROBERT K. VICINO ("Vicino") is, and at all relevant times was, an individual residing in Del Mar, California.

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LAW OFFICES OF HENRY HARMELING IV, APC
402 W. Broadway, Suite 1760
San Diego, California 92101
Telephone: (619) 814-3505
Facsimile: (858) 408-2405

CR

3. On information and belief, Defendant TIA WALKER ("Walker") is an individual and has her principal place of business in Pebble Beach, California.

4. On information and belief, Defendant LUXURY FRACTIONAL GETAWAYS ("LFG") is a business entity of unknown form and has its principal place of business in Pebble Beach, California.

5. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship, and/or employment.

6. Plaintiff is informed and believes and thereon alleges that at all relevant times each of the Defendants actively participated in or subsequently ratified or adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances including, but not limited to, full knowledge of each and all of the violations of Plaintiff's rights and the damages to Plaintiff caused thereby.

JURISDICTION

7. This action arises under the copyright laws of the United States, 17 U.S.C. §§ 101 et seq., and this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

8. Personal jurisdiction over Walker and LFG (collectively, "Defendants") in this District is proper because the Defendants, willfully and without consent or permission of the copyright owner, disseminated over the Internet copyrighted works owned and/or controlled by Plaintiff. 9

9. On information and belief, Defendants knew the Plaintiff's principal place of business is in the Southern District of California. On information and belief, Defendants' illegal dissemination of Plaintiff's copyrighted work occurred in every jurisdiction in the United States, including this one.

VENUE

10. Venue is proper in this court under 28 U.S.C. §§ 1391(b), 1391©, and 1400(a) as Defendants have purposefully directed activities at this forum, including willfully infringing Plaintiff's copyright with knowledge that Plaintiff's principal place of business is in the forum.

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ALLEGATIONS IN SUPPORT OF ALL CLAIMS

11. Vicino is the author of Copyright Registration Nos. TX-6-613-055 and TX-6-856-810, entitled "Fractional Villas.com website (www.fractionalvillas.com)" ("the Copyrights"). (See Exhibits "1" - "2.") Copyright Registration No. TX-6-613-055 encompasses the Fractional Villas website as of October 5, 2007; Copyright Registration No. TX-6-856-810 encompasses the Fractional Villas website as of July 10, 2008. FVI is the Copyright Claimant. The first copyright was filed October 11, 2007, and the registration became effective the same date. The second copyright was filed July 10, 2008, and the registration became effective July 11, 2008. The Copyrights pertain to a web site offering fractional ownership in luxury properties. Both the web site content and source code are contained in the Copyrights.

12. The works protected by Copyright Registration Nos. TX-6-613-055 and TX-6-856-810 are original works of authorship fixed in a tangible medium of expression that contain a substantial amount of material created by the skill, labor, and judgment of Vicino. The works protected by Copyright Registration Nos. TX-6-613-055 and TX-6-856-810 are derivative works of prior versions, all of which were authored by Vicino, and which were first published at least as early as March 27, 2005.

13. Between March 2005 and October 2007, Vicino modified the content of FVI's web site, located at www.fractionalvillas.com, however the vast majority of the works protected by Copyright Registration Nos. TX-6-613-055 and TX-6-856-810 has been on this site, with a © on each page, since approximately March 2005.

14. Plaintiff FVI and Vicino have complied in all respects with the Copyright Laws of the United States and received from the Register of Copyrights the certificate of registration for Copyright Nos. TX-6-613-055 and TX-6-856-810.

15. The Copyrights are licensed solely and exclusively by Vicino to FVI, which markets, advertises, and sells fractional ownership in luxury properties on www.fractionalvillas.com.

16. On information and belief, Defendants have claimed authorship of the copyrighted work on www.luxuryfractionalgetaways.com.

17. On information and belief, Defendants designed the infringing web site.

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 Telephone: (619) 814-3505
 Facsimile: (619) 408-2405

18. Defendants have infringed Plaintiff's copyright registrations of United States Copyright Nos. TX-6-613-055 and TX-6-856-810 by reproducing the work protected by the Copyrights and incorporating that work, or significant portions thereof, into Defendants' Internet site and/or Internet sites under Defendants' dominion and control.

19. Defendants do not have permission or license from Plaintiff to use any portion of the Copyrights protected by United States Copyright Registration Nos. TX-6-613-055 and TX-6-856-810.

20. Defendants have derived and are deriving economic benefit from the infringement of United States Copyright Registration Nos. TX-6-613-055 and TX-6-856-810, and Plaintiff has been damaged and continues to be damaged by Defendants' infringement. Defendants' infringement of the Copyrights has diverted potential customers away from FVI's Internet site. Defendants posted the copyrighted work on the web site www.luxuryfractionalgetaways.com to earn income from the sale of fractional ownership in luxury properties.

21. Defendants' infringement is exacerbated by the fact that the infringing text was indexed by major search engines Google and Yahoo, and broadcast worldwide in response to key word searches, and thus comes into direct competition with Vicino's original work for visitors and buyers. FVI's business and reputation were irreparably harmed by the confusion caused by the dual publication of the infringed material through web search engine results from Google, Yahoo, et al.

22. Defendants are Plaintiffs' competitors. Both Plaintiffs and Defendants compete for business in the fledgling marketing of fractional ownership in luxury properties. On information and belief, Walker owns, operates, or are otherwise affiliated with LFG.

23. At all relevant times, each of the pages on the Fractional Villas website contained the following statement: "Copyright © All Rights Reserved Fractional Villas, Inc. 2005 - ____." The time period encapsulated to the present day, such that the site currently indicates a copyright period of 2005-2008. Following the copyright notice on every web page, each of the pages also expressly identifies FVI's address in Del Mar California, thus giving notice to potential infringers for purposes of jurisdiction in the instant venue.

24. In or about mid-2008, Vicino and FVI discovered that a significant portion of the material on www.fractionalvillas.com had been copied and was being used www.luxuryfractionalgetaways.com.

25. Defendants have infringed Plaintiff's copyright registration of United States Copyright Nos. TX-6-613-055 and TX-6-856-810 by reproducing the work protected by the Copyrights and incorporating that work, or portions thereof, into Defendants' web site(s).

26. Defendants do not have permission or license from Plaintiff to use any portion of the Copyrights protected by United States Copyright Registration Nos. TX-6-613-055 and/or TX-6-856-810.

27. Defendants have derived and are deriving economic benefit from the infringement of United States Copyright Registration Nos. TX-6-613-055 and TX-6-856-810, and Plaintiff has been damaged and continues to be damaged by Defendants' infringement.

28. Plaintiff alleges that Defendants are aware their web site infringes the Copyright. Nevertheless, Defendants have blatantly usurped not only Plaintiff's concept, but have also chosen to simply take the content off of FVI's web site and to claim it as their own.

FIRST CAUSE OF ACTION: INFRINGEMENT OF U.S. COPYRIGHT NOS.

TX-6-613-055 AND TX-6-856-810 AS AGAINST ALL DEFENDANTS

29. Plaintiff incorporates by reference the paragraphs as set forth above.

30. Effective October 11, 2007, U.S. Copyright No. TX-6-613-055 ("the Copyright"), entitled "Fractional Villas.com website (www.fractionalvillas.com)," was duly and legally issued to Plaintiffs ROBERT K. VICINO and FRACTIONAL VILLAS, INC. FVI is the sole and exclusive licensee of this Copyright. This Copyright was updated effective July 11, 2008, as reflected in TX-6-856-810.

31. FVI is in the business of marketing, advertising, and selling fractional ownership in luxury properties, primarily through the aforementioned web site.

32. Plaintiff is the owner in fact of all rights to the Copyrights.

33. Defendants Walker and LFG are engaged in the business of marketing, advertising, and selling fractional ownership in luxury properties by way of www.luxuryfractionalgetaway.com, a web site that was built, designed, and constructed using material and content that is the subject of the Copyrights, and without the authorization of Plaintiff. Defendants have reproduced the work protected by the Copyright and incorporated that work, or significant portions thereof, into Defendants' Internet site and/or Internet sites under Defendants' dominion and control.

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34. By committing the acts alleged herein, including but not limited to reproducing the work protected by the Copyrights and incorporating that work, or significant portions thereof, into Defendants' Internet site and/or Internet sites under Defendants' dominion and control, Defendants have infringed, induced, and/or contributed to the infringement of the Copyrights.

35. Upon information and belief, Plaintiff alleges that Defendants' infringement, inducement of infringement, and/or contributory infringement of the Copyrights has been willful, deliberate, knowing, and with wanton disregard of Plaintiff's ownership of the Copyrights.

36. Upon information and belief, Plaintiff alleges that Defendants will continue to infringe, continue to induce others to infringe, and/or continue to contributorily infringe the Copyrights to Plaintiff's irreparable damage unless enjoined by this court.

37. Plaintiff has been damaged by the foregoing infringing acts of Defendants in an amount that exceeds \$150,000. The exact amount of such damages can be determined upon an accounting.

SECOND CAUSE OF ACTION: FEDERAL UNFAIR COMPETITION VIOLATIONS

AS AGAINST ALL DEFENDANTS

38. Plaintiff incorporates by reference the paragraphs as set forth above.

39. This court has jurisdiction of this action under its supplemental jurisdiction authority pursuant to 18 U.S.C. § 1338(b) to hear Plaintiff's related federal claim of unfair competition that arises out of the same operative facts as the federal copyright infringement claim set forth above.

40. Plaintiff is informed and believes and on that basis alleges that Defendants' infringement of the Copyrights constitutes unfair competition under 15 U.S.C. § 1125(a).

41. Defendants' infringing use of the works protected by United States Copyright Registration Nos. TX-6-613-055 and TX-6-856-810 on the infringing site is a false designation of origin and false and misleading representation of fact.

42. Defendants' infringing use of the works protected by United States Copyright Registration Nos. TX-6-613-055 and TX-6-856-810 on the infringing site is likely to cause confusion, cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with FVI, or as to the sponsorship or approval of Defendants and Defendants' services by FVI.

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43. Defendants' infringement of the Copyrights and other unfair, deceptive and fraudulent business practices have been willful, deliberate, knowing, and made with wanton disregard of FVI's ownership in the Copyrights.

44. By reason of the conduct alleged herein, Defendants are guilty of malice, oppression, and willful disregard of the rights of Plaintiff.

45. Defendants' unlawful, unfair, deceptive and fraudulent business practice constitutes despicable, outrageous, oppressive, and malicious conduct under California Civil Code § 3294, and thereby justifies an award of exemplary and punitive damages against Defendants, and each of them as federal law allows for the importation of state punitive damages statutes where the federal claim is tortious in nature.

46. As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has sustained and will sustain injury to its business and property in an amount not yet precisely ascertainable but including the loss of sales of their products and services and loss of reputation and goodwill.

THIRD CAUSE OF ACTION: CALIFORNIA UNFAIR COMPETITION VIOLATIONS
AS AGAINST ALL DEFENDANTS

47. Plaintiff incorporates by reference the paragraphs as set forth above.

48. This court has jurisdiction of this action under its supplemental jurisdiction to hear Plaintiff's related claim of unfair competition that arises out of the same operative facts as the federal claims set forth above.

49. Plaintiff's state claim is based upon California Business & Professions Code §§ 17200 et seq.

50. Plaintiff is informed and believes and thereon alleges that Defendants' intentional infringement of the Copyright is an unlawful, unfair, and/or fraudulent business act or practice and constitutes unfair competition under California state law. Defendants have started a business to directly compete with Plaintiff's business by creating a web site to market and advertise Defendants' business, and ultimately to drive Defendants' sales, taking from Plaintiff not only the concept of fractional ownership of luxury properties, but also directly stealing and copying copyrighted material from Plaintiff's web site. Moreover, Defendants have reproduced the work protected by the Copyrights and

1 incorporated that work, or significant portions thereof, into Defendants' Internet site and/or Internet sites
2 under Defendants' dominion and control.

3 51. Plaintiff is informed and believes and thereon alleges that Defendants acts as alleged
4 herein constitute unfair, deceptive, untrue, and misleading advertising in that Defendants represent to
5 the public the web www.luxuryfractionalgetaways.com is comprised of unique material copyrighted by
6 Defendants when, in fact, Defendants have reproduced the work protected by the Copyrights and
7 incorporated that work, or significant portions thereof, into Defendants' Internet site and/or Internet sites
8 under Defendants' dominion and control when, in fact, such work is in fact copyrighted by Plaintiff and
9 which has been existing on Plaintiff's web site since August 2005.

10 52. Defendants' unlawful, unfair, deceptive, and fraudulent business practice and unfair,
11 deceptive, untrue, and misleading advertising constitutes despicable, outrageous, oppressive, and
12 malicious conduct under California Civil Code § 3294 and justifies an award of exemplary and punitive
13 damages against Defendants, and each of them.

14 53. As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has sustained
15 and will sustain injury to its business and property in an amount not yet precisely ascertainable but
16 including the loss of sales of luxury properties and loss of reputation and goodwill.

17 PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff prays this court enter judgment against Defendants as follows:

19 1. That a temporary restraining order and, subsequently, that a preliminary injunction be
20 granted enjoining Defendants and all those in privity with Defendants during the pendency of this action
21 from further infringement of U.S. Copyright Registration Nos. TX-6-613-055 and TX-6-856-810;

22 2. That a permanent injunction be granted perpetually enjoining Defendants from further
23 infringement of U.S. Copyright Registration Nos. TX-6-613-055 and TX-6-856-810;

24 3. That a temporary restraining order and, subsequently, that a preliminary injunction be
25 granted enjoining Defendants and all those in privity with Defendants during the pendency of this action
26 from advertising, displaying, or broadcasting over the Internet a web site which reproduces the
27 Copyrights or any derivation thereof, or which by imitation or other similarity to those of the Copyrights
28 are likely to cause confusion, mistake, dilution, or persons to be deceived into the belief that Defendants'